
**State Government Operations &
Accountability Committee**

HB 3103

Brief Description: Authorizing state employees to express their professional opinions.

Sponsors: Representatives Hunt, Williams, Upthegrove, Anderson, Hasegawa, Ormsby and Simpson.

Brief Summary of Bill

- Allows state employees to express their professional opinions.
- Allows a state employee to refuse to sign a document if he or she objects to its contents.

Hearing Date: 1/30/06

Staff: Stephanie Toby (786-7106).

Background:

Under article I, section 5 of the Washington State Constitution, and the First Amendment of the United States Constitution, an individual's right to freedom of speech is protected from governmental interference. Public employees may not be compelled to relinquish these rights as a condition of employment. However, the United States Supreme Court has recognized that public employers have a legitimate interest in accomplishing the public services with which they are charged, and are thus afforded broad discretion in matters of personnel and internal affairs.

Washington courts have established a four-part test to determine whether a public employer's action violated an employee's rights under the Washington and United States Constitutions.

In determining whether a public employee's right to free speech has been violated, the court must consider:

- whether the subject of the speech is a matter of public concern;
- how the employee's free speech interest balances against the employer's interest in an efficient work place;
- whether the speech was a substantial or motivating factor in whatever employment decision was made; and
- whether the employer would have made the same employment decision if the speech had not been made.

A public employer carries the burden of establishing that its interests outweigh the interests of an employee. The burden varies depending on the degree of public concern inherent in the employee's speech. If the content of an employee's speech relates more to personal - rather than public - concern, courts will more readily allow its restriction.

In balancing the interests of a public employer and employee, courts will consider:

- the time, place and manner of the employee's speech;
- whether the statement would create problems in maintaining discipline by immediate supervisors or harmony among co-workers;
- whether the employment relationship is one in which personal loyalty and confidence are necessary; and
- whether the speech impeded the employee's ability to perform daily responsibilities.

Summary of Bill:

A state employee is allowed to express his or her professional opinions:

- in the workplace on topics within his or her scope of duties, even if such opinions differ from the agency's or supervisor's official opinions
- when representing the agency, even if the employee's opinion differs from the agency's position, if the employee clearly indicates that he or she is expressing his or her own professional opinion
- when off duty, whether or not the issues are related to the employee's job duties; however if the issue is related to the employee's job duties, the employee must clearly indicate that he or she is expressing personal opinion and not representing the agency.

A state employee has the right as a public citizen to express an opinion on any issue on his or her own time.

A state employee shall not be required to sign a document if he or she objects to the contents of the document or believes that signing the document could jeopardize his or her professional license.

It is a violation of the Ethics in Public Service Act to retaliate, take disciplinary action, or withhold the promotion of a state employee because the employee expressed his or her professional opinion, or because a state employee refused to sign a document as described above.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.